

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1067 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

NARESH HARISHANKER JAIN

Versus

THE DEPUT POLICE COMMISSIONER

Appearance:

MR VIJAY H PATEL for Petitioner
Mr. Nigam Shukla, learned Addl.P.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 01/11/96

ORAL JUDGMENT :

1. Through this Special Criminal Application the petitioner has challenged the externment order dated 18-3-95 passed by the Deputy Police Commissioner, Traffic Branch, Ahmedabad City read with the order dated 26-4-95 passed by the Deputy Secretary, Home Department (Special) whereby the petitioner's Appeal was rejected against his

externment. The petitioner is thus under externment in terms of the order dated 18-3-95.

2. The present Special Criminal Application was filed in this court on 10-7-95 and on 14-7-95 Rule returnable on 6-11-95 was issued. An affidavit-in-reply dated 23-10-96 has been filed by the Deputy Commissioner of Police.

3. The externment order has been challenged inter alia on the ground that the petitioner has not been convicted for any offence. The only allegations on the basis of which the externment order has been passed are that of his being engaged in bootlegging activities. Unless there was a conviction there was no question of externment under S.27 of the Bombay Police Act and for the allegations of being engaged in bootlegging, the externment order could not be passed under S.56(b) of the Bombay Police Act as has been done in the instant case. The learned counsel for the petitioner has argued that there is no allegation that the petitioner was engaged or is about to be engaged in the commission of any offence involving force or violence or an offence punishable under Chapter 12, 16 or 17 of the IPC and as such the proceedings taken against the petitioner and the order of externment which has been passed under S.56(b) is wholly misconceived. The learned counsel for the petitioner has placed reliance on a Division Bench decision of this Court reported in 1989(2) GLR 1429 (Aswin v. Dy.Commi. of Police) wherein it has been held that in case of allegations of indulging in bootlegging activities action can be contemplated under S.57 of the Bombay Police Act and in case there is no conviction under the Bombay Prohibition Act, the proceedings for externment could not be taken against the petitioner under S.56(b). For bootlegging activities leading to conviction, externment order can be passed under S.57 only. The learned counsel for the petitioner has placed reliance on Para 10 of the aforesaid Judgment of the Division Bench, which applies with full force in the facts of this case and the externment order passed with reference to S.56(b) of the Bombay Police Act could not be sustained in the eye of law. The learned counsel for the petitioner has also argued that the petitioner has already suffered the externment since March 1995 i.e. for a period of more than one and half years by now.

4. Accordingly this Special Criminal Application is allowed. The impugned externment order dated 18-3-95 read with the appellate order dated 26-4-95 are hereby quashed and set aside and the petitioner is set at liberty

forthwith as if the externment order had not been passed against him. Rule is made absolute. Direct service is permitted.

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